IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 431 of 1988
With
FIRST APPEAL No. 1046 of 1988

For Approval and Signature:
HONOURABLE MR.JUSTICE R.S.GARG

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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SHANTABEN JAYANTILAL PATEL & 1 - Appellant(s)
Versus
JAYRAMBHAI V BHARWAD & 1 - Defendant(s)

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Appearance :
MR SHITAL R PATEL for Claimants.
MS MAYA DESAI for Respondents

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 16/07/2007

ORAL JUDGMENT

1. The claimant so also the owner of the bus and master of the driver, being aggrieved by the award dtd.6/11/1987 made by the Motor Accident Claim Tribunal (Main),

Nadiad in Motor Accident Claim Petition No.957 of 1984, are before this Court. The claimants are seeking enhancement in the compensation, while, the owner of the bus is seeking reduction in the compensation amount.

2. Deceased Girish son of Jayantilal Patel was a young boy of 28 years, he had gone to United State of America and stayed there for a period of three months, when he came back, he met with a fatal accident and died. The parents filed the claim petition seeking enhancement of compensation on the ground that the driver was rash and negligent and the owner would be vicariously liable. The opponents appeared before the tribunal and contested the matter on all possible counts. After recording the evidence and hearing the parties, the learned tribunal awarded a sum of Rs.75,000=00 in favour of the claimants. The claimants seek enhancement, while, the owner of the bus is seeking reduction. The owner of the bus has confined the claim to the tune of Rs.43,400=00, meaning thereby that they are not challenging rashness and negligence of the driver, accident and entitlement of the claimants.

3. From the side of the claimants, some evidence has been brought on the records to prove that the deceased was

employed at 800 $ per month and was likely to get an increment of 50$ per month. According to the claimants, the deceased was employed with his own sister and the sister had proved the facts.

4. Mr.Shital R.Patel, learned counsel for the claimants submitted that in view of the cogent and clinching evidence brought on the records by the claimants, the tribunal should have held that the income of the deceased was 800 $ per month and he was providing sufficient help to the aged parents.

5. Ms.Maya Desai, learned counsel for the Gujarat State Road Transport Corporation, on the other hand, submitted that the sister of the deceased but for making an oral statement in the court that she was paying a sum of 800=00 $ to her brother, has not brought any other evidence. She submits that the impugned award deserves to be reduced.

6. It is to be seen from the records that the sister of the deceased but for making an oral statement did not produce any accounts in the court, she did not even produce the balance-sheet either audited or unaudited. Under the circumstances, the court below was not unjustified in holding that the income of the deceased

could not be 800 $ per month.

7. It is also to be seen that the claimants have not brought any evidence on the records that for earning the salary, the deceased had obtained work permit in United State of America. It is also to be seen that the claimants have not brought any evidence on the records to prove that the deceased had spent some money or when he returned back to India, he gave some money to the claimants. Under the circumstances, I must hold that the claimants failed in proving that the monthly income of the deceased was 800 $ per month or they were dependent on the son of a large extent.
8. The tribunal, in the opinion of this Court, was absolutely justified in holding that the dependency of the claimants could be Rs.600=00 and was also justified in making an award in sum of Rs.64,800=00. The tribunal was also justified in making the award under the different heads.
9. I find no reason to interfere. Consequently, both the appeals are dismissed.

(R.S. GARG, J.)

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